

1888-020
Lee Co.

Chancery Causes: Levi Howard vs. Moses S. Ball &

Gibson, McKinney, Moss, Annis, Ely, Harris, Thomas,
Willis, Campbell, Kennedy

-Deed

CA-Contract Dispute
T-Property

To the Hon. H.S.K. Merison Judge of the Circuit Court
of Lee County Virginia:

Your Orator Levi Howard a citizen of said county
of Lee humbly complaining would respectfully represent
that on or about the day of 188 He purchased
of one William Ball then living but now dead a certain
tract or parcel of land lying and being in said county of
Lee on the waters of Indian Creek about 27 miles west of
the Court House supposed to contain 35 acres more or less.

Your Orator states that at the time he so purchased
said land the said William Ball reserved to himself for
the benefit of his heirs, the half of all such Mineral coal
as might be in and upon said tract of land.

Your Orator further states that by the terms of his said
purchase, he was to pay to the said William Ball for the
said tract of land, the sum of \$250.00; a part of which your
Orator paid said Ball, in his lifetime, and the residue he has
since paid to Moses L. Ball a son, and the executor of the
last will and testament of the said William Ball, so
that your Orator here charges that he has fully paid the
entire purchase price for said tract of land.

Your Orator further states, that soon after making said purchase,
he went upon and took possession of said tract of land, and
has used and occupied it ever since, and is now in the
full and uninterrupted possession thereof.

Your Orator states that during the lifetime of said Wm.
Ball, that on the day of 1884 He had caused
to be prepared a proper deed of conveyance by which he
intended to convey to your Orator said land, but very soon
after said deed was so prepared for execution, the said William
Ball was taken sick and so continued until the 17th
day of March 1885 when he died without having signed
and acknowledged said paper by which it was his in-
tention to convey said land to your Orator, and the said

1 deed of conveyance so prepared for the purpose aforesaid is
2 herewith filed as a part of this bill marked (A) and your
3 Orator states that the land so purchased by him from said
4 William Ball is properly described by metes and bounds in
5 said exhibit (A)

6 Your Orator states that said William Ball departed this
7 life on the 17th day of March 1885, after having made
8 and published his last will and testament by which
9 said W. S. Ball was nominated executor thereof.

10 Your Orator states that said Will was duly proven and
11 admitted to probate, and said W. S. Ball duly appointed
12 and qualified as the executor thereof, but your Orator states
13 that that said Will does not confer on said executor any
14 power or authority to sell or convey real estate so that the
15 title to the said tract of land so purchased and paid for
16 by your Orator, at the death of said William Ball, descended
17 to his children, Grand children, and Great Grand children
18 hereafter named.

19 The said William Ball at his death left three living children
20 and the descendants of five children who are dead. Those
21 now living are Moses S. Ball the executor of said last Will,
22 Martha, now the wife of David C. Willis, and Lavinia, now
23 the wife of Joseph C. Thomas. Those of his children who are
24 dead leaving children & descendants are as follows to wit,

4 25 Jane, who married Thomas S. Gibson after giving birth to five
26 children died leaving W. G. Gibson, Charles R. Gibson, Mary
27 now the wife of George Gibson, Annie, now the wife of Barney
28 Campbell and Jane, now the wife of Joseph A. Gibson.

5 29 Franklin Ball a son of the said William died many years
30 ago, leaving one child only, Elizabeth Ball, now the wife
31 of B. McKimney.

6 32 Mary S. a daughter of said Wm. Married Rufus Mox who
33 after giving birth to 5 children died leaving W. Mox, M. J.

1 Mrs. Franklin Mose, Edward Mose & Elizabeth. Now the wife
2 of John B. Annis her heirs at law.

7 3 Eliza Ball a daughter of said Wm. Ball married W. S. Ely
4 who died leaving Robert M. Ely her only heir at law, and
5 afterward the said Robert M. Ely died leaving three children
6 his heirs at law to wit Margaret Ely Mary Ely and Annie
7 Ely all of whom are minors under 21 years of age.

8 8 Esther A. Ball another daughter of said William Ball married
9 A. M. Ely, who after giving birth to 7 children died leaving
10 Wm. S. Ely, Alexander M. Ely Mary. Now the wife of E. H. Harris
11 Charles Ely, Ruttie, now the wife of William T. Kennedy and
12 John B. Ely and Minnie Ely her heirs at law, the last two
13 of whom are minors under 21 years of age.

14 9 Your Orator further states that said Wm. G. Gibson Charles
15 R. Gibson, B. McKinney and Elizabeth McKinney his wife
16 M. J. Mose, Wm. Mose, Franklin Mose, Edward Mose, John B.
17 Annis and Elizabeth Annis his wife, Wm. S. Ely, E. H. Harris
18 and Mary Harris his wife, Charles B. Ely, John Ely and
19 Joseph B. Thomas, and Lavinia Thomas his wife are now residents
20 of the state of Virginia.

21 10 Your Orator now states that at the death of said William Ball
22 the legal title to the tract of land sold by him to your Orator
23 descended and passed to his children grand children and
24 great grand children before named, and your Orator is
25 advised that under the facts of the case he is entitled
26 in a court of equity to have said contract specifically executed
27 on the part of said Ball and his heirs, by having a deed
28 of conveyance to him for said land on the part of said heirs
29 and to attain that end is the object of this bill.

30 11 The premises considered your Orator prays that said
31 Moses S. Ball, David C. Willis, and Bartman his wife, Joseph
32 B. Thomas, and Lavinia his wife, William G. Gibson, Charles
33 R. Gibson, George Gibson and Mary Gibson his wife, Barray

1 Campbell and Annie Campbell his wife, Josephus T. Gibson
2 and Jane Gibson his wife, B. McKimney and Elizabeth McKimney
3 his wife M. J. Moss, W. Moss, Franklin Moss, Edward Moss
4 John C. Anis and Elizabeth Anis his wife Margaret Ely.
5 Mary Ely, Annie Ely, W. S. Ely, A. M. Ely, E. W. Harris and Mary
6 Harris his wife, Charles C. Ely, W. J. Kennedy and Patten Kennedy
7 his wife John Ely, and Minnie Ely do make defendants to
8 this bill, and be required to answer the same fully on
9 oath, that a guardian ad litem be appointed for the said
10 Margaret Ely Mary Ely Annie Ely John Ely and Minnie
11 Ely to defend their interest in this cause, that an Order
12 of Publication be entered posted and published against the
13 said W. G. Gibson, Charles R. Gibson, B. McKimney, Elizabeth M.
14 McKimney, M. J. Moss, W. Moss, Franklin Moss, Edward Moss,
15 John C. Anis, Elizabeth Anis, W. S. Ely, E. W. Harris and Mary
16 Harris, Charles C. Ely, John Ely and Joseph B. Thomas & Lucina
17 Thomas his wife And after a hearing of the cause a
18 decree be entered ordering a specific execution of the contract
19 referred to and a Court be appointed to convey on the part of
20 said defendants, the legal title to said tract of land to your
21 Orator, and if in any wise mistaken in this his Special
22 prayer, then your Orator prays for all general relief
23 May the commission of the writ of specific execution
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Levi Howard

25.9. m.

vs. Bill

6	11.57
8	6.00
G. A. L.	5.00
Pr.	5.00
CA	15.00
Court.	5.00
<hr/>	
\$45.57	

Moses, S. Ball others.

1888 June Bill filed Sher
Exd on adult debts
and D. Crisis as to them
Order Publication & Contd
" July D. N. Confab and
G. A. L. filed & Contd
Aug. Order Pub. completed and
Cause set for hearing
Augt. Decree for specific execution
" Decree confirming deed &
cause Stricken from docket.

To the Hon W. S. K Morrison Judge of The
Circuit Court of Lee Co Va
The Answer of Margaret Ely Mary Ely
Annie Ely Minnie Ely & Jno Ely, by J. M.
Morgan their Guardian Ad Litem to a
bill filed in this Honorable court
against & others by Lori Howard

Respondent says on behalf of his said
wards that he knows nothing personally
of the bargain sale of the land in the
Plaintiffs bill mentioned, or of any
other matter therein stated, and neither
his said wards or others have in-
formed him of any matter or fact in
connection therewith, and therefore he is not
in any condition to either admit or
deny any of the statements in the Plffs
bill. Respondent says his said wards
are young and of tender years and being
such are infants are the peculiar objects
and case of Courts of Equity. Their
rights and interest in this case are
therefore committed to your honors
guardian care & protection, and having now
as fully answered as deemed necessary
or material, Respondent prays his wards to
be hence dismissed with ^{their} reasonable costs

Jno M Morgan Guard Ad Litem

J^{no} M. Morgan

vs 3ans for infants

Levi Howard

1888 July Rules, this

ans. filed

J A Hyatt c.c.

Levi Howard Peff
vs. } In Chy
Moses S. Ball others Defts

This cause came on to be finally heard on the papers heretofore read therein and the report of Court H. J. Morgan dated Sep the 1888 and filed in the cause at the present term showing that he had executed a deed conveying to the plaintiff the tract of land in the bill mentioned as the part of the depts. and was argued by counsel and the said report and deed being accepted to the consideration of all which it is adjudged ordered and decreed that said report and deed be confirmed and the clerk of this will deliver to the clerk of the county court said deed for recordation and it is further adjudged ordered and decreed that the Peff recover against Moses S. Ball the executor of the Ball dead the costs of this suit including a fee of \$3.00 to Court Morgan for said deed and the same to be paid out of testators estate in the hands of said M. S. Ball and no further action being necessary the parties are hence discharged the cause stricken from the docket.

Leri Howard

as { Decm 102 final

Memor. Bull out

Entered Page 133

Hyatt

Entered this

Sept 5 1888

H. K. M.

Levi Howard

Paffy

Moses S. Ball et al

Ditto

Indy

This cause came on this day & found on the bill of the Paffy and exhibit therewith taken for ingress and all the adult defendants and the removal of the infant defendants by John M. Morgan their guardian and later and came argued by counsel. On consideration of all which it appears to the court that the Paffy is entitled to have a deed of conveyance from the defendants. That is at law of the Court clerk, for the tract of land in the plaintiffs bill mentioned. It is the opinion of the court and directed that the defendants be divested of the legal title to the tract of land in the said bill mentioned and such legal title is hereby divested in Henry S. Morgan who is Clerk in Court for the purpose and he is directed to convey such legal title to the Paffy with covenants of special warranty according to the Statute and bounds as set out in exhibit reserving to the defendants the Homestead and coal in yet open and left to the Paffy bill, and he will report his action to the court and started the coming in thereof the cause is continued.

Levi Howard

no. 3 Drum No. 1

Miss S. Bullard

Entered Aug 1871

Levi Howard

Entered this
Sept. 1871
Levi Howard

I do swear that W. E. Gibson Charles E. Gibson, R.
M. Kinney & Elizabeth M. Kinney his wife, M. J. Mayo, Mary
Mayo Franklin Mayo, Elizabeth Mayo, John C. Annis and
Elizabeth Annis his wife, Wm. S. Ely, E. W. Harris & Mary
Harris his wife, Charles C. Ely, John Ely, Joseph C. Thomas
and Lucina his wife are residents of the State of
Virginia as I verily believe so helps can find.

W. H. D. Ball

Subscribed & sworn to before me

by W. H. D. Ball the 1st day of April 1880

Henry J. Thompson Clerk

Margaret Ely, Mary Ely, Francis Ely, Minnie Ely and
John Ely are infants under 21 years of age

Levi Howard

or $\frac{1}{3}$ Affiant

Wm S. Ball ~~et al~~

Levi Howard

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In Reply

Hon. S. Bullard

Sir

To the Hon. S. Bullard Judge of the Circuit Court of Lee County Virginia

As directed by your honor in this case on the 4th day of Sept. 1877, I have been requested and acknowledged to appear in court of Lee County Va. and I as best have complied therewith by being in the court of the county of Lee Va. and the 25th day of Sept. 1877. In the bill mentioned with a return of service made by me, I have stated that the 25th day of Sept. 1877, I have been requested and acknowledged to appear in court of Lee County Va. and I as best have complied therewith by being in the court of the county of Lee Va. and the 25th day of Sept. 1877.

Respectfully Submitted

Henry J. Allen

Sept. 5 1877

5/3 Court Report of Clerk

James S. Ball - Clerk

Filed Sept 5 1888.

J. A. Hyatt

Confessed Sep 5 1888 & Clerk
John S. Ball - Clerk

This deed made this the 4th day of 1884
Between William Ball Sen. & Elisabeth Ball his wife of
the county of Lee & State of Virginia of the first part &
Lery Howard the second part of the same county & State
witness that for and in consideration of the sum of two
hundred & fifty dollars to them in hand paid the
receipt whereof is here by acknowledged the parties
of the first part hath this day bargained and sold and
by these presents doth bargain sell and convey unto the
party of the second part a certain tract or parcel of
Land ^{with the reserve of one half of the mineral or coal on said lands to my heirs} lying and being in the county of Lee and
State of Virginia and on the waters of Indian Creek
& bounded as follows Beginning at a stone at a branch
thence N 47° W 27 poles to a chestnut gum & maple Locks
corner thence N 65° E 100. poles to a stone in fields line
thence S 70° W with fields line 182 poles to a chestnut
oak near a large Rock on a spur in the fields line
thence down said Spur S 18° E 40 poles to a chestnut
on said Spur thence S 11° W 16 poles to a chestnut on said
Spur thence S 2 1/2° E 26 poles to a chestnut on the Ridge
thence S 12 poles to a chestnut oak on side of ridge corner
to John Susong thence S 39° E with John Susongs line
64 poles to a locust thence N 75 1/2° E 16 poles to a beech
stump on a branch thence up said branch as
it meanders to the beginning suppose to contain
35 acres be the same more or less to have and to
hold the said tract or parcel of Land with all
of its appertinances there unto belonging and

the portyes of the first part doth covenant unto and
with the portye of the second part to warrant the
above described Lands to gether with all of its appurtenan-
ces against the claims of all persons what ever and
his heirs for ever ^{except the lap on adjoining Lands if any} in testimony where of we have
hereunto set our hands and Seales the day and
date above written

Sealed
Sealed

3

Levi Howard

I know the fact that my father William Ball sold the land described
in this paper to Levi Howard, and the same is fully paid for, and
this paper was prepared with the view of conveying the land
to Levi Howard but before the deed was signed and recorded
in the office of the clerk of the court he died without conveying it to his intention

Wm. S. Ball

Love Raymond
vs ^{vs} Order Book

James S. Bickerton
I certify that I
delivered to the Clerk
of the Court House on the 7 May 1885, an
official copy of this
order for Publication
and posted a like
copy thereof at the
front door of the
Court House on
the first day of
the July Term 1885
of the County Court
J. A. Hyatt

The Commonwealth of Virginia.

To The Sheriff Of Lee County Greeting:

We Command You to Summon

¹Barthend ²Willis ³Joseph ⁴Thomas ⁵Laurins ⁶Thom's ⁷Wm G. Gibson,
⁸Chas. R. Gibson ⁹George ¹⁰Gibson ¹¹Mary ¹²Gibson ¹³Barnum ¹⁴Campbell ¹⁵Ann ¹⁶Camp
¹⁷Bell ¹⁸Josephus ¹⁹G. Gibson ²⁰Jane ²¹Gibson ²²B. McKinney ²³Elizabeth ²⁴McKinney ²⁵M. J.
²⁶Moss ²⁷Wm. Moss ²⁸Franklin ²⁹Moss ³⁰Edward ³¹Moss ³²John C. Annis ³³Elizabeth
³⁴Annis ³⁵Margaret ³⁶Ely ³⁷Mary ³⁸Ely ³⁹Annie ⁴⁰Ely ⁴¹Wm. S. Ely ⁴²J. W.
⁴³Ely ⁴⁴R. W. Ely ⁴⁵Mary ⁴⁶Harrie ⁴⁷Charles ⁴⁸Ely ⁴⁹Wm. S.
⁵⁰Reynolds ⁵¹Rosetta ⁵²Harriett ⁵³John ⁵⁴Ely ⁵⁵and
⁵⁶Minnie ⁵⁷Ely

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday
in June next, being rule day to answer a bill in Chancery exhibited in our said Court
against them by Levi Howard

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse.
This 17th day of May 1888, in the 11² year of the Commonwealth.

A Copy Teste

J. A. G. Hyatt Clerk.

(H. J. M.)

Levi Howard

res { Spa in Ches

Moses S. Ball et al

Lo June Rules 1888.

Existent by delivering
a copy to the within
to M. S. Ball & L. Willis
Barthene Willis Geo Gibson
Mary Gibson Barney Campbell
bell Annie Campbell J. N.
Gibson James Gibson
A. M. Eby Wm. T. Kennedy
Rhetha Kennedy
June 1st 1888.

E. S. Bishop Deputy
for R. D. Flannery
S. L. C.

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427

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VIRGINIA:

At Rules held in the clerk's office
of the circuit court for Lee County on
Monday the 7 day of May, 1888.

Levi Howard

vs

Moses E. Ball et al Defendant.

In Chy.

The object of this suit is to obtain
the legal title to the land in the
Bill mentioned; and it appearing from
an affidavit filed this cause that the
defendants Wm. G. Gibson, Charles R.
Gibson, B. McKinney, Elizabeth McKin-
ney, M. J. Moss, Wm. Moss, Franklin
Moss Edward Moss, John C. Amis, Eliz-
abeth Amis, Wm. S. Ely, E. W. Harris,
Mary Harris, Charles C. Ely, John Ely
Joseph C. Thomas and Lavina Thomas
are non-residents of this State:

It is therefore ordered that they appear
here within one month after due publica-
tion of this order and do what may be
necessary to protect their interest in this
suit.

Acopy Teste.

J. A. G. Hyatt, c. c.

H. J. Morgan p. q.

I hereby certify the legal notice
hereto attached has appeared
four successive times in the
Cumberland Eagle, closing
June 4, 1888,

Printers fee \$5.00.

M. D. L. Grabel Editor.

Levi Howard
3 Printers
as 3 Certificate
Moses S. Ballou

Printers fee 5¢